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A. S. WHITE & CO., Inc. v. JORDAN.

Jan. 16, 1919.

[98 S. E. 24.]

1. Constitutional Law (§ 309 (2)*)—Corporations (§ 500*)—Due Process of Law—Service on Domestic Corporation by Publication.—Code 1904, § 3225, authorizing service by publication on domestic corporation having no person in the county or corporation wherein action is commenced on whom process can be served, is not violative of Const. U. S. Amend. 14, and Const. 1902, § 11, prohibiting taking of property "without due process of law."

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 231-232.]

2. Corporations (§ 101 (12)*)—Process—Publication—Designation of Newspaper.—Code 1904, § 3225, authorizing service by publication on domestic corporations having no person in the county or corporation in which action is brought upon whom service can be had, upon an order by court or clerk of court directing publication, requires, by implication, that court or clerk designate the particular newspaper to publish the process.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 220.]

3. Evidence (§ 83 (1)*)—Publication—Presumption—Acts of Officer—Designation of Newspaper.—Court or clerk designating newspaper to publish process on domestic corporation having no person in county or corporation wherein action is brought upon whom service can be had, under Code 1904, § 3225, will be presumed to require publication in such newspaper as is most likely to give defendant notice.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 238.]

4. Constitutional Law (§ 48*)—Construction Favoring Validity.—If language of statute is fairly susceptible of two constructions, under one of which it is valid and under the other invalid, the construction sustaining validity will be adopted.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 163; 17 Va.-W. Va. Enc. Dig. 912.]

5. Constitutional Law (§ 48*)—Validity of Statute—Presumption.—Intention of Legislature to respect constitution inhibitions and pass a valid statute will be presumed.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 163.]

6. Principal and Agent (§ 144*)—Actions—Suit in Agent's Name.—Action on contract in name of agent and in which agent has an interest can be brought in agent's name.

[Ed. Note.—For other cases, see 15 Va.-W. Va. Enc. Dig. 35.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Nelson County.

Action by J. W. Jordan against A. S. White & Co., Incorporated. Judgment for plaintiff, and defendant brings error. Affirmed.

Caskie & Caskie, of Lynchburg, for plaintiff in error.

S. B. Whitehead, of Lovingsston, for defendant in error.

WASHINGTON-SOUTHERN RY. CO. *v.* GRIMES' ADM'R.

Jan. 16, 1919.

[98 S. E. 30.]

1. Trial (§ 253 (4)*)—Instructions—Omission of Defendant's Theory.—In an action for the death of plaintiff's decedent in a collision between the automobile wherein she was driving with her husband and defendant's engine at a public crossing, an instruction, directing a verdict for plaintiff if "defendant was guilty of any negligence alleged in plaintiff's declaration," was erroneous as omitting defendant's theory that decedent was guilty of contributory negligence.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 737.]

2. Trial (§ 296 (4, 5)*)—Instructions—Cure of Error—Contradictory Instructions.—Where an instruction directing verdict for plaintiff is erroneous as omitting defendant's theory of the defense of contributory negligence, the error cannot be cured by other instructions, since it cannot be said whether the jury was controlled by one instruction or the other.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 745.]

Error to Circuit Court, Fairfax County.

Action by Caroline H. Grimes' administrator against the Washington-Southern Railway Company. Judgment for plaintiff, and defendant brings error. Reversed and remanded.

Moore, Keith, McCandlish & Hall, of Fairfax, and *Eppa Hunton, Jr.*, of Richmond, for plaintiff in error.

C. V. Ford, of Fairfax, *Nicol & Son*, of Alexandria, for defendant in error.

SOUTHERN RY. CO. *v.* ABEE'S ADM'R.

Jan. 16, 1919.

[98 S. E. 31.]

1. Railroads (§ 312 (7)*)—Warning Signals—Statutes—"Highway Crossing."—A railroad crossing on extension of an alley from a street to a factory gate, recognized by the railway by the erection of a whistle post, held a "highway crossing" within Code 1904, §

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.